LIM GUAN ENG

v.

PP

FEDERAL COURT, KUALA LUMPUR
EUSOFF CHIN CJ
WAN ADNAN ISMAIL CJ (MALAYA)
ZAKARIA YATIM FCJ
[CRIMINAL APPEAL NO: MO5-3-1998]
18 JUNE 1999

CRIMINAL LAW: *Section 8A(1) Printing Presses and Publications Act 1984 - Malicious publication of false news - Ingredients - Proof - Whether necessary to prove mens rea separately - Presumption of malice - Section 8A(2) - Whether rebutted - Proper test - Whether accused had taken reasonable measures to verify truth of news - 'Ordinary man on the street' test - Whether inapplicable*

CRIMINAL LAW: *Section 4(1)(b) Sedition Act 1948 - Uttering seditious words - Proof - Allegation that Malaysia had double-standard laws, that Attorney General had not prosecuted a 'criminal' and that the court had detained an innocent girl - Whether gave rise to 'seditious tendency' - Whether could excite dissatisfaction against administration of justice in Malaysia*

EVIDENCE: *Documentary evidence - Parliamentary record - Admissibility - Charge under s. 8A(1) of Printing Presses and Publications Act 1984 - Maliciously publishing false news - Accused a Member of Parliament - Whether record of Parliamentary debates admissible to ascertain whether accused had taken reasonable measures to verify truth of news*

EVIDENCE: *Corroboration - Documentary evidence - Former statement by witness - Whether admissible to corroborate a testimony - Section 157 Evidence Act 1950*

WORDS & PHRASES: *"Imprisoned" - Meaning of*

In 1994, allegations were made that Tan Sri Rahim Thamby Chik, then the Chief Minister of Malacca ('Tan Sri Rahim'), has had a sexual relationship with an under-aged girl ('the girl'). The allegations notwithstanding, no police report was lodged by the girl against Tan Sri Rahim. Police reports, instead, were lodged by the girl against fourteen other persons alleging that they had sexual relationship with her.

The facts showed that, at the beginning of their investigation into Tan Sri Rahim's case, the police kept the girl in their custody with the consent of her father. Subsequently, however, the girl was detained at a rehabilitative centre following an order made by the learned magistrate under s. 8(4)(9) of the Women and Girls Protection Act 1973.

The Attorney General, in his capacity as Public Prosecutor, had decided not to prosecute Tan Sri Rahim on the ground that there was insufficient evidence to do so. The appellant, who was a Member of Parliament from Malacca, was apparently unhappy with the way things were, and in October 1994, the appellant raised the issue of the alleged sexual relationship between Tan Sri Rahim and the girl in Parliament. Thereafter, on 19 January 1995, the appellant held a public talk at the Emperor Hotel, Melaka, wherefore he told the crowd *inter alia* "that the Attorney General had decided not to prosecute Tan Sri Rahim, that the law of Malaysia had a double-standard, that the court had detained an innocent girl and that Tan Sri Rahim should have been imprisoned for violating the law". The appellant also distributed pamphlets entitled "Mangsa Dipenjarakan" at the talk, the word 'Mangsa' referring to the girl. The evidence also showed that three police officers ('SP2, SP7 and SP 13') were among the members of the crowd, and that notes were taken by SP2 of the appellant's speech there ('exh P6').

The appellant was alleged to have published false news maliciously vide the pamphlet "Mangsa Dipenjarakan" and was charged under s. 8A(1) of the Printing Presses and Publications Act 1984 ('the first charge'). The appellant was also alleged to have given a seditious speech at the ceramah, and was further charged with an offence under s. 4(1)(b) Sedition Act 1948 ('the second charge'). The High Court found the appellant guilty of both charges, and sentenced the appellant to fines of RM10,000 in default six months imprisonment on the first charge and RM5,000 in default three months imprisonment on the second charge. On appeal, and cross-appeal by the Public Prosecutor, the Court of Appeal affirmed the convictions but substituted the sentences with imprisonment for a term of 18 months on each of the charges.

The appellant appealed and the primary issues that arose were: (i) whether the words "Mangsa Dipenjarakan" as published by the appellant was false; (ii) whether the appellant had taken reasonable measures to verify the truth of the words published so as to rebut the presumption under s. 8A(2) of the Printing Presses and Publications Act; (iii) whether Record of Parliamentary Debates which was admitted into evidence and considered by the Trial Court below was inadmissible and was hence wrongly admitted; and (iv) whether SP2's testimony herein could be corroborated by exh P6.

Held:
Zakaria Mohd Yatim FCJ

[1] When a person is charged under s. 8A(1) of the Printing Presses and Publications Act, the prosecution need only prove that: (i) there was a publication; (ii) the publication contained false news; and (iii) the accused had maliciously published the false news. Also, *mens rea* need not be proved separately as the word "maliciously" means 'wilfully or intentionally and without lawful excuse'.

[2] Where there is a publication containing false news, there is a presumption that the accused maliciously published the said false news. To rebut the presumption the accused need only to show that he has taken reasonable measures to verify the truth of the news. The 'ordinary man on the street' test does not apply in a prosecution under s. 8A(1), and accordingly, the Court of Appeal had erred in applying the test here.

[3] A person is sent to prison after the court of law has convicted him and sentenced him to a term of imprisonment. In this case, the girl was kept in protective police custody with the consent of her father, and later detained under a court order made pursuant to s. 8(4)(9) of the Women and Girls Protection Act 1973. Under this section a magistrate may order a female person to be detained in a place of refuge for a period of three years if he is satisfied that the female person is in need of protection. Therefore, when the girl was detained in Bukit Aman and later at Taman Seri Puteri she was not imprisoned. The words "Mangsa Dipenjarakan" as contained in the pamphlet was clearly false.

[4] There was no evidence that the appellant had taken reasonable measures to verify the truth of the words published. In this respect, the court is not precluded from looking at the Record of Parliamentary Debates of the House of Representative ('exh P20') for the purpose of ascertaining whether the appellant had taken such measures in Parliament.

[4a] Exhibit P20 showed that the appellant had moved a motion to debate the matter in Parliament and not to verify the truth whether the girl was in prison. Exhibit P20 did not show that the appellant had taken measures to verify the truth that the girl was "mangsa dipenjarakan". There was therefore no evidence to rebut the presumption under s. 8A(2) of the 1984 Act. The appellant is hence guilty of the first charge.

[5] Under s. 157 of the Evidence Act 1950, a former statement made by a witness is admissible in order to corroborate a testimony. The weight of such a statement for the purpose of corroboration, however, depends on the facts of a particular case.

[6] Section 157 applies to the present case. That is because the provision contained therein is not contrary to s. 6(1) of the Sedition Act. Exhibit P6 therefore corroborates SP2's evidence. The weight of the statement for the purpose of corroborating SP2's evidence is a question of fact.

[6a] The High Court and the Court of Appeal were right in finding that although exh P6 alone was insufficient corroboration to convict the appellant, SP2's evidence was corroborated by the evidence of PW7 and PW13. This is sufficient corroboration in the eyes of the law. In the circumstances, the appellant was rightly convicted of the second charge.

[7] The Court of Appeal rightly applied the deterrence principle in enhancing the sentences in respect of both the first and second charges. The sentences are not manifestly excessive bearing in mind the nature of the charges and the facts of the case.

[Appeals dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Dalam tahun 1994, dakwaan-dakwaan telah dibuat bahawa Tan Sri Rahim Tamby Chik, ketika itu Ketua Menteri Melaka ('Tan Sri Rahim'), telah mempunyai perhubungan seksual dengan seorang perempuan di bawah umur ('perempuan tersebut'). Meskipun terdapatnya dakwaan-dakwaan tersebut, tiada laporan polis telah dibuat oleh perempuan tersebut terhadap Tan Sri Rahim. Laporan-laporan polis sebaliknya telah dibuat oleh perempuan tersebut terhadap empat belas orang yang lain yang mendakwa bahawa mereka telah mempunyai hubungan seksual dengannya.

Fakta-fakta menunjukkan bahawa, pada permulaan penyiasatan mereka terhadap kes Tan Sri Rahim tersebut, polis telah menahan perempuan tersebut di dalam jagaan mereka dengan persetujuan bapanya. Kemudiannya, perempuan tersebut telah ditahan di sebuah pusat permulihan akhlak berikutan dengan satu perintah yang dibuat oleh majistret yang bijaksana di bawah s. 8(4)(9) Akta Perlindungan Wanita dan Gadis 1973.

Peguam Negara, dalam kedudukannya sebagai Pendakwa Raya, telah memutuskan untuk tidak mendakwa Tan Sri Rahim atas alasan bahawa tidak terdapat keterangan yang mencukupi untuk melakukan sedemikian. Perayu, yang merupakan seorang Ahli Parlimen dari Melaka, jelas tidak gembira dengan keadaan perkara tersebut, dan dalam bulan Oktober 1994, perayu telah membangkitkan isu perhubungan seksual yang didakwa itu antara Tan Sri Rahim dan perempuan tersebut dalam Parlimen. Selepas itu, pada 19 Januari 1995, perayu telah mengadakan ceramah umum di Emperor Hotel, Melaka, di mana beliau memberitahu orang awam antara lainnya, "bahawa Peguam Negara

telah memutuskan untuk tidak mendakwa Tan Sri Rahim, bahawa undang-undang Malaysia mempunyai dwistandard, bahawa mahkamah telah menahan seorang perempuan yang tidak bersalah dan bahawa Tan Sri Rahim sepatutnya dipenjarakan kerana melanggari undang-undang." Perayu juga mengedarkan risalah-risalah bertajuk "Mangsa Dipenjarakan" di ceramah itu, perkataan "Mangsa" merujuk kepada perempuan tersebut. Keterangan juga menunjukkan bahawa tiga pegawai polis ("SP2, SP7 dan SP13") juga berada di kalangan orang ramai, dan bahawa nota-nota telah dicatatkan oleh SP2 mengenai ucapan perayu di situ. (eks P6).

Perayu telah didakwa menerbitkan berita-berita palsu dengan niat jahat melalui risalah "Mangsa Dipenjarakan" dan telah dituduh di bawah s. 8A(1) Akta Mesin Cetak dan Penerbitan 1984 ('tuduhan pertama'). Perayu juga didakwa telah memberikan satu ucapan yang menghasut di ceramah tersebut, dan telah selanjutnya dituduh dengan satu kesalahan di bawah s. 4(1)(b) Akta Hasutan 1948 ('tuduhan kedua'). Mahkamah Tinggi mendapati perayu bersalah atas kedua-dua tuduhan, dan menjatuhkan hukuman denda sebanyak RM10,000 terhadap perayu jika mungkir enam bulan penjara atas tuduhan pertama dan RM5,000 jika mungkir tiga bulan penjara atas tuduhan kedua. Atas rayuan, dan rayuan balas oleh Pendakwa Raya, Mahkamah Rayuan mengesahkan sabitan-sabitan tersebut tetapi menggantikan hukuman-hukuman dengan pemenjaraan bagi satu tempoh selama 18 bulan ke atas setiap satu pertuduhan.

Perayu telah merayu dan isu-isu utama yang berbangkit adalah: (i) samada perkataan-perkataan "Mangsa Dipenjarakan" sepertimana yang diterbitkan oleh perayu adalah palsu; (ii) samada perayu telah mengambil langkah-langkah yang berpatutan untuk menentusahkan kebenaran perkataan-perkataan yang diterbitkan bagi mematahkan tanggapan di bawah s. 8A(2) Akta Mesin Cetak dan Penerbitan; (iii) samada Rekod-Rekod Debat Parlimen yang telah diterima-masukkan ke dalam keterangan dan dipertimbangkan oleh Mahkamah Perbicaraan di bawah adalah tidak boleh diterima dan dengan itu diterima-masuk secara salah; dan (iv) samada testimoni SP2 di sini boleh disokong oleh eks P6.

Diputuskan:
Oleh Zakaria Yatim HMP

[1] Apabila seseorang dituduh di bawah s. 8A(1) Akta Mesin Cetak dan Penerbitan, pihak pendakwaan hanya perlu membuktikan bahawa: (i) terdapatnya satu penerbitan; (ii) penerbitan tersebut mengandungi berita palsu; dan (iii) tertuduh telah dengan niat jahat menerbitkan berita palsu. Juga, *mens rea* tidak perlu dibuktikan secara berasingan kerana perkataan "berniat jahat" bermakna "dengan sengaja dan tanpa alasan yang sah."

[2] Di mana terdapatnya satu penerbitan yang mengandungi berita palsu, wujud tanggapan bahawa tertuduh telah dengan berniat jahat menerbitkan berita palsu tersebut. Untuk mematahkan tanggapan itu tertuduh hanya perlu menunjukkan bahawa beliau telah mengambil langkah-langkah wajar untuk menentusahkan kebenaran berita tersebut. Ujian "the ordinary man on the street" tidak terpakai dalam pendakwaan di bawah s. 8A(1), dan sehubungan itu, Mahkamah Rayuan telah tersalah pertimbangan dalam memakai ujian itu di sini.

[3] Seseorang dihantarkan ke penjara selepas mahkamah undang-undang mensabitkan beliau dan menjatuhkan hukuman tempoh pemenjaraan. Dalam kes ini, perempuan tersebut telah ditahan dalam jagaan perlindungan polis dengan kebenaran bapanya, dan kemudiannya ditahan di bawah perintah mahkamah yang dibuat selaras dengan s. 8(4)(9) Akta Perlindungan Wanita dan Gadis 1973. Di bawah seksyen ini seseorang majistret boleh memerintahkan seorang wanita supaya ditahan di dalam sebuah pusat tahanan selam tiga tahun jika beliau berpuashati bahawa wanita itu memerlukan perlindungan. Oleh itu, apabila perempuan tersebut ditahan di Bukit Aman dan kemudianya di Taman Seri Puteri beliau telah tidak dipenjarakan. Perkataan "Mangsa Dipenjarakan" seperti yang terkandung di dalam risalah tersebut adalah jelas palsu.

[4] Tiada keterangan bahawa perayu telah mengambil langkah-langkah wajar untuk menentusahkan kebenaran perkataan-perkataan yang diterbitkan. Sehubungan dengan ini, mahkamah tidak dihalang daripada melihat Rekod-Rekod Debat Parlimen Dewan Rakyat (eks P20) bagi tujuan memastikan samada perayu telah mengambil langkah-langkah yang sedemikian dalam Parlimen.

[4a] Ekshibit P20 menunjukkan bahawa perayu telah mengusulkan satu usul untuk mendebatkan perkara tersebut di Parlimen dan bukan untuk menentusahkan kebenaran samada perempuan tersebut berada dalam penjara. Ekshibit P20 tidak menunjukkan bahawa perayu telah mengambil langkah-langkah untuk menentusahkan kebenaran bahawa perempuan tersebut adalah "mangsa dipenjarakan". Oleh itu tidak terdapat keterangan untuk mematahkan tanggapan di bawah s. 8A(2) Akta 1984 tersebut. Perayu dengan itu bersalah atas tuduhan yang pertama.

[5] Di bawah s. 157 Akta Keterangan 1950, satu kenyataan dahulu yang dibuat oleh seorang saksi boleh diterima masuk bagi menyokong sesuatu testimoni. Nilai keterangan yang sedemikian bagi tujuan sokongan, walaubagaimana pun, bergantung pada fakta-fakta sesuatu kes yang khusus.

[6] Seksyen 157 terpakai kepada kes semasa. Ini adalah kerana peruntukan yang terkandung di dalamnya tidak bercanggahan dengan s. 6(1) Akta Hasutan. Ekshibit P6 dengan itu menyokong keterangan SP2. Nilai kenyataan bagi tujuan menyokong keterangan SP2 adalah persoalan fakta.

[6a] Mahkamah Tinggi dan Mahkamah Rayuan betul dalam memutuskan bahawa walaupun eks P6 sahaja adalah sokongan yang tidak mencukupi untuk mensabitkan perayu, keterangan SP2 telah disokong oleh keterangan SP7 dan SP13. Ini merupakan sokongaan yang mencukupi pada mata undang-undang. Dalam keadaan tersebut, perayu telah dengan betulnya disabitkan atas tuduhan kedua.

[7] Mahkamah Rayuan dengan betulnya memakai prinsip pencegahan dalam memperkukuhkan lagi hukuman-hukuman tersebut berhubung dengan tuduhan-tuduhan pertama dan kedua. Hukuman-hukuman tersebut bukannya amat melampau mengambil kira sifat pertuduhan-pertuduhan dan fakta kes tersebut.

[Rayuan ditolak.]

Case(s) referred to:
Aziz Muhammad Din v. PP [1996] MLJ 475 ***(refd)***
Bradlaugh v. Gossett [1884] 12 QBD 271 ***(refd)***
Church of Scientology of California v. Johnson-Smith [1972] 1 All ER 378 ***(refd)***
Inspector-General of Police & Anor v. Lee Kim Hong [1979] 2 MLJ 204 ***(refd)***
Karpal Singh v. Sultan of Selangor [1987] 2 CLJ 342 ***(refd)***
Karthiyayani & Anor v. Lee Leong Sin & Anor [1975] 1 MLJ 119 ***(foll)***
Liew Wah Ming v. PP [1963] 29 MLJ 82 ***(refd)***
Lim Yow Choon v. PP [1972] 1 MLJ 205 ***(refd)***
Mark Koding v. PP [1983] 1 MLJ 113 ***(refd)***
Mohamed Ali v. PP [1962] 28 MLJ 201 ***(refd)***
Mohamed Alias v. PP [1983] 2 MLJ 172 ***(refd)***
Pie B En Chin v. PP [1983] 1 CLJ 316 ***(refd)***
PP v. Datuk Hj Harun Hj Idris [1977] 1 MLJ 15 ***(refd)***
PP v. Pung Chan Choon [1994] 1 MLJ 566 ***(refd)***
PP v. Samsul Kamar Mohd Zain [1988] 1 CLJ 542 ***(refd)***
R v. Koh Soon Poh [1935] 4 MLJ 120 ***(refd)***
R v. Velayuthan [1935] 4 MLJ 277 ***(refd)***
Seena Pakkeer Mohamed & Ors v. Pana Kader Merah [1896] SSLR 84 ***(refd)***
Stockdale v. Hansard [1839] 9 Ad E1 1 ***(refd)***
Times Publishing Bhd & Ors v. S Sivadas [1988] 3 MLJ 1 ***(refd)***
TN Nathan v. PP [1978] 1 MLJ 134 ***(dist)***

Legislation referred to:
Constitutional (Amendment) Act 1971, cl. (1), (4)
Evidence Act 1950, ss. 4, 73A(1), (2), (3), (4), (5), (6), (7), 157
Federal Constitution, arts. 63, 150(1)

Penal Code, s. 376
Printing Presses and Publications Act 1984, ss. 2, 8A(1), (2)
Sedition Act 1948, ss. 2, 3, 4(1)(b), (c), 6(1)
Women and Girls Protection Act 1973, s. 8(4)(9)

Bill of Rights 1688 [UK], art. 9

Other source(s) referred to:
Corroboration by Former Statements, S Augustine Paul, [1990] 2 MLJ xci
Kamus Bahasa Melayu Utusan, p 1400
Latin Words and Phrases for Lawyers, RS Vasa (Ed), 1980, p 80
Law Terms & Phrase Judicially Interpreted, p 454
Stroud's Judicial Dictionary, 5th edn, vol 3, p 1222
The Concise Oxford Dictionary, 1995, 9th edn, p 683
The Law Lexicon with Legal Maxims, P Ramanatha Aiyar, 1992, p 558
Words & Phrases, Permanent edn, vol 20, p 467

For the appellant - Karpal Singh (J Amardas, Jagdeep Singh Deo & Gobind Singh Deo with him); M/s Karpal Singh & Co
For the respondent - Azahar Mohammed & Yusof Zainal Abidin (LC Tay with them) DPP

Reported by WA Sharif

JUDGMENT

Zakaria Yatim FCJ:

The appellant was charged with two offences. The first charge was under s. 8A(1) of the Printing Presses and Publications Act 1984 (Act 301) and the second charge was under s. 4(1)(b) of the Sedition Act 1948.

He was tried before Mohd. Noor Abdullah J, in the High Court, Melaka. At the end of the trial, the learned judge found him guilty of both charges, convicted him and fined him RM10,000 in default six months imprisonment on the first charge and RM5,000 in default three months imprisonment on the second charge. The appellant appealed against his convictions and sentences. The Public Prosecutor appealed against sentences. There were four appeals before the Court of Appeal.

On 1 April 1998, the Court of Appeal dismissed the appellant's appeals against convictions and sentences. It allowed the Public Prosecutor's cross appeals and sentenced the appellant to eighteen months imprisonment on each charge.

The appellant appealed to this court against the decision of the Court of Appeal.

We heard the appeals and on 25 August 1998 we dismissed all the four appeals and confirmed the convictions and sentences passed by the Court of Appeal. We ordered the sentences to take effect from 25 August 1998. On that date we indicated that we would give our written judgment at a later date. This is my written judgment.

The first charge against the appellant was that in January 1995 in the district of Melaka Tengah, Melaka, he maliciously published false news namely. "MANGSA DIPENJARAKAN" and thereby committed an offence under s. 8A(1) of the Printing Presses and Publications Act 1984 and punishable under the same section.

The second charge was that on 19 January 1995 at about 9.40pm at Dewan Permai Sari in Hotel Emperor, Jalan Munshi Abdullah, Melaka, the appellant made a speech which contained seditious words, namely:

(a) he was dissatisfied with the laws of Malaysia in that it had a double standard whereby a rape case involving Tan Sri Rahim Thamby Chik was not brought to court and the Attorney-General said that Tan Sri Rahim Thamby Chik was not involved in a rape case with an under aged girl;

(b) he was dissatisfied with the decision of the court to detain the girl involved for a period of three years. Tan Sri Rahim Thamby Chik should be sent to prison but instead the person who contravened the law was allowed to go free.

The two charges against the appellant were in Bahasa Malaysia and we think it is appropriate to set out the two charges here:

PERTUDUHAN

Bahawa kamu pada bulan Januari 1995 di dalam Daerah Melaka Tengah, dalam Negeri Melaka, dalam satu penerbitan risalah yang bertajuk CERAMAH "KISAH BENAR" dengan niat jahat telah menerbitkan berita yang tidak benar iaitu:

"MANGSA DIPENJARAKAN"

Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah seksyen 8A(1) Akta Mesin Cetak dan Penerbitan 1984 (Akta 301) dan boleh dihukum di bawah seksyen 8A(1) Akta yang sama.

PERTUDUHAN

Bahawa kamu pada 19.1.1995 jam lebih kurang 9.40 malam, di Dewan Permai Sari, Tingkat Tiga, di Hotel Emperor, Jalan Munshi Abdullah, di dalam Daerah Melaka Tengah, dalam Negeri Melaka, telah memberikan ucapan dalam ceramah dengan menyebut kata-kata yang menghasut iaitu:

(a) Bahawa kamu menyatakan yang kamu tidak puas hati dengan Undang-Undang di Malaysia kerana 'double-standard' yang menyebabkan kes rogol yang melibatkan Tan Sri Rahim Thamby Chik tidak dihadapkan ke Mahkamah dan Peguam Negara telah menyatakan Tan Sri Rahim Thamby Chik tidak terlibat dalam kes rogol perempuan bawah umur.

(b) Bahawa kamu menyatakan yang kamu tidak puashati Mahkamah memberikan keputusan supaya gadis yang terlibat dalam kes rogol itu ditahan selama tiga tahun. Sebenarnya Tan Sri Rahim Thamby Chik patut dimasukkan ke Penjara dan sebaliknya orang yang melanggar Undang-Undang dibebaskan

Yang mempunyai kecenderungan bagi mendatangkan benci atau penghinaan atau bagi membangkitkan perasaan tidak suka terhadap pentadbiran keadilan dalam Malaysia dan oleh yang demikian, kamu telah melakukan satu kesalahan di bawah seksyen 4(1)(b) Akta Hasutan, 1948 (Akta 15) dan boleh dihukum di bawah seksyen 4(1) Akta yang sama.

The evidence adduced at the trial is clearly set out in the grounds of judgment of the trial judge. Briefly, the facts are that the media, in particular the Utusan Malaysia published the news alleging that Tan Sri Rahim Thamby Chik, the then Chief Minister of Melaka had a sexual relationship with an under-aged school girl. On the basis of the media information, ACP Mok Siew Hong, who was the head of the Criminal Investigation Division, Melaka, lodged a police report at the Melaka Tengah Police Station on 29 August 1994, regarding the alleged sexual relationship of Tan Sri Rahim Thamby Chik. The police investigated the case. The investigation papers were sent to the Attorney-General's office. The Attorney-General, in his capacity as Public Prosecutor, decided not to prosecute Tan Sri Rahim on the ground that there was insufficient evidence to prosecute him. The girl in question did not lodge a police report against Tan Sri Rahim on the alleged sexual relationship. She however lodged police reports against fourteen other persons alleging that they had sexual relationship with her. The fourteen persons were charged in court. Eight pleaded guilty and sentenced by the court. The other six claimed trial.

At the beginning of the investigation into *Tan Sri Rahim's* case, the girl in question was kept in police custody at Bukit Aman with the written consent of her father. On 30 November 1994, the magistrate in Kuala Lumpur ordered that the girl be detained at Taman Seri Puteri, Rembau, Negeri Sembilan under s. 8(4)(a) of the Women and Girls Protection Act 1973 for a period of three years. The girl's grandmother was not happy with the said order and filed an application for a writ of *habeas corpus* in the High Court, Kuala Lumpur. The High Court dismissed the application.

In October 1994, the appellant raised the issue of the alleged sexual relationship between Tan Sri Rahim Thamby Chik and the said under-aged girl in Parliament. On 19 January 1995, the appellant held a ceramah (a public talk) at the Emperor Hotel Melaka. He also distributed pamphlets inviting people to attend the ceramah. The heading of the pamphlets reads:

Ceramah 'Kisah Benar'

... Tan Sri Abdul Rahim Thamby Chik Sex Scandal

... Wither Justice and Women's Rights, Victim imprisoned, Criminal Free.

At the ceramah the appellant spoke for about 45 minutes before an audience of about 300 people, mostly Malays. In his speech, the appellant told the gathering that the laws of this country had a double-standard. He said that the Attorney-General decided not to prosecute Tan Sri Rahim. But the court detained the innocent girl for a period of three years. He added that Tan Sri Rahim should have been imprisoned for violating the law.

Subsequently a police report was lodged. At the conclusion of the police investigations, the appellant was charged in court with the two offences as stated above.

At the hearing of the appeals before this court, Mr. Karpal Singh, counsel for the appellant raised a number of issues. The first issue was on the question of jurisdiction. Mr. Karpal Singh argued that the resident judge in Melaka should have presided at the trial of his client and not a judge from Seremban. He added that the learned judge from Seremban could only hear the case in Melaka on the instruction of the Chief Judge of Malaya. The Honourable the Chief Justice of the Federal Court, explained that in this particular case the President of the Court of Appeal, who was the Acting Chief Judge of Malaya at the material time, gave the direction to the judge in Seremban, Mohd. Noor Abdullah J to hear the case in Melaka. After the explanation, Mr. Karpal Singh did not pursue the point.

He then proceeded to ground three of the petition, which states that the learned trial judge, after "delivering a deraf keputusan (draft judgment) ... was precluded subsequently from handing down written judgment dated 28 February 1997 (which must have been written on some date after 28 April 1997) ...". The "deraf keputusan" of the trial judge was made on 28 April 1997. It was his draft decision on the case for the defence. He found the appellant guilty and convicted him on both charges. After hearing the plea in mitigation, he sentenced the appellant. It is to be noted that on 20 November 1996 the trial judge read his grounds of decision when he called on the appellant to enter his defence on the two charges. In our view the

"deraf keputusan" is not a judgment of the case. There was only one judgment before the Court of Appeal and that is the grounds of judgment which was written separately.

On the last page of the judgment, the date of decision (tarikh keputusan) was 28 February 1997. Mr. Karpal Singh questioned the validity of that judgment. He accepted however that it was typing error. He said that the judgment must have been written after 28 April 1997. He submitted that the date could not be ascertained and there was no way of ascertaining the date. He argued that the judgment was a nullity and asked this court to order a retrial.

The Court of Appeal rightly decided that the judgment was erroneously dated 28 February 1997 and proceeded to amend the date to 28 April. The court said that the judgment must have been written on some date after 8 April 1997. It concluded that the date was a typographical error that occasioned no miscarriage of justice. The court went on to state:

> We are therefore of the view that no prejudice whatsoever has been visited upon the appellant by reason of the matters complained of by him in this regard and that the convictions entered against him have in no way been vitiated by the error in the date appearing on the written judgment.

We think the Court of Appeal was right in arriving at the above conclusion and we need not elaborate any further.

We now turn to the substantive issues.

As stated earlier, the first charge against the appellant was in respect of an offence under s. 8A(1) of the Printing Presses and Publications Act 1984. Section 8A(1) & (2) states:

> (1) Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall be guilty of an offence and shall on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.
>
> (2) For the purposes of this section, malice shall be presumed in default of evidence showing that prior to publication, the accused took reasonable measures to verify the truth of the news.

The false news alleged to have been published by the appellant was "MANGSA DIPENJARAKAN". The word "mangsa" refers to the under-aged girl. In his grounds of judgment, the trial judge made the following finding at p. 143 of vol. II of the Appeal Record.

> Menurut ACP Mok Siew Hoong (SP12) yang menyiasat kes skendal sex Tan Sri Rahim, berita mangsa dipenjarakan dalam risalah itu adalah tidak benar, gadis bawah umur itu tidak dipenjarakan dalam ertikata gadis itu didakwa di Mahkamah, disabitkan kesalahan dan dihukum penjara. Gadis itu ditahan dalam siasatan dan diletak bawah jagaan polis di Balai Polis Jalan Travers dan kemudian di Bukit Aman. Keluarga melawatnya, bapa memberi keizinan menahannya. Selepas itu Majistret memerintahkan gadis itu ditahan selama 3 tahun di Pusat Perlindungan Gadis dan Wanita di Taman Seri Puteri, Rembau, Negeri Sembilan. Nenek gadis itu tidak bersetuju dan mengemukakan permohonan *habeas corpus* untuk membatalkan perintah Majistret itu tetapi Hakim Mahkamah Tinggi Kuala Lumpur menolak permohonan nenek itu. **Maka jelaslah gadis itu tidak dipenjarakan. Berita mangsa dipenjarakan adalah berita tidak benar.** (emphasis added)

He also found that the appellant maliciously published the words in question (*Ibib.*, p. 144).

The Court of Appeal agreed with the finding of the trial judge.

Mr. Karpal Singh submitted that there was no denial that the under-aged girl was detained at Bukit Aman and subsequently at Taman Seri Puteri. He argued that the word "detention" is synonymous with "imprisonment". In support of his argument he referred to the following dictionaries. *The Law Lexicon with Legal Maxims* edited by P. Ramanatha Aiyar, 1992 p. 558; *Stroud's Judicial Dictionary*, 5th edn. vol. 3, p. 1222; *Law Terms & Phrases Judicially Interpreted*, published in Lahore p. 454; *Kamus Bahasa Melayu Utusan*, p. 1400; *Words & Phrases* – Permanent edn. vol. 20 p. 467; and *The Concise Oxford Dictionary*, 9th edn. 1995, p. 683.

We have read the definitions of the words "imprisonment" and "Penjara" in those dictionaries and we find the definitions are too general and vague. These definitions are not helpful at all.

The *Shorter Oxford English Dictionary*, however, gives a clearer definition. According to the dictionary, "prison" means "to put in prison, make a prisoner of, to keep in a place of confinement, to detain in custody." The word "prisoner" is defined as "One who is kept in prison or custody ... one who is in custody as a result of a legal process." The *Daftar Istilah Undang-Undang (Bahasa Inggeris - Bahasa Malaysia)*, 1990, states that "prison" is "penjara". It is clear therefore that a person is sent to prison after the court of law has convicted him and sentenced him to a term of imprisonment.

From the evidence, the under-aged girl was kept in protective custody in Bukit Aman with the written consent of her father. On 30 November 1994 the magistrate in Kuala Lumpur ordered the girl to be detained at Taman Seri Puteri under s. 8(4)(9) of the Women & Girls Protection Act. Under the section a magistrate may order a female person to be detained in a place of refuge for a period of three years if he is satisfied that the female person is in need of protection. Therefore when the girl was detained in Bukit Aman and later at Taman Seri Puteri she was not imprisoned.

The trial judge concluded that the words "mangsa dipenjarakan" as contained in the pamphlet was false. The Court of Appeal agreed with his conclusion. We, too, agree with his conclusion in the circumstances of this case.

The Court of Appeal said that the test to be applied in a case under s. 8A(1) is that of the ordinary man on the street. In its judgment, the court said:

> It must not be forgotten that the offending pamphlet was directed at all and sundry. In our judgment, the test that is to be applied in a case under section 8A(1) is that of the ordinary man on the street. He is not one who habitually carries with him leading dictionaries of the Malay or the English language. He does not examine the words addressed to him by referring to such works. He is not a lawyer who is possessed of knowledge of technical terms. He is one who accepts them in the sense in which they are ordinarily used. He has no specialised knowledge upon the subject to which the words relate. He has in his possession only such general information as is available to all and sundry. The question then to be asked is: what would the words "Mangsa dipenjarakan" convey to such a man in their ordinary sense?

In our view, when a person is charged under s. 8A(1) of the Act, the prosecution need only to prove the following:

(a) There must be a publication. A publication includes a document, newspaper, book, periodical, all written or printed matter and anything which by its form, shape or in any manner is capable of suggesting words or ideas. (See s. 2 of the Act).

(b) The publication contains false news.

(c) The accused maliciously published the false news. The accused may be the printer, publisher, editor or the writer of the false news.

Where there is a publication containing false news, there is a presumption that the accused maliciously published the said false news. Under sub-s. 2, malice shall be presumed in default of evidence showing that prior to publication the accused took reasonable measures to verify the truth of the news.

What we have just stated is consistent with the view held by the Supreme Court in *Public Prosecutor v. Pung Chan Choon* [1994] 1 MLJ 566. In delivering the judgment of the Supreme Court, Edgar Joseph Jr. SCJ said at p. 577:

> It was obvious that publications intended to be hit by Section 8A(1) of the Act were only those wherein were maliciously published any false news. In other words, the mere publication of false news in any publication is not an offence under Section 8A(2). To be so, the false news must have been maliciously published.
>
> We did not consider it necessary for purposes of the present Reference to determine what element of *mens rea* is required to be proved for an offence under Section 8A(1). However, we would remark that the word 'maliciously' is nowhere defined herein, but we think it would not be incorrect to say that the word 'maliciously' in the context of Section 8A(1), bears its ordinary meaning in Acts creating offences, namely, wilfully or intentionally and without lawful excuse ...
>
> As for the presumption under Section 8A(1) that malice shall be presumed in default of evidence showing that, prior to publication an accused had taken reasonable measures to verify the truth of the news, this is merely a reversal of onus provision, designed to assist the prosecution in establishing a case to answers, if, but only if, it is proved that the news concerned is false.

From the passage quoted above, it appears that *mens rea* need not be proved separately because the word "maliciously" means "wilfully or intentionally and without lawful excuse".

In its judgment in *Public Prosecutor v. Pung Chan Choon*, the Supreme Court made no reference at all to the ordinary man on the street test. In our opinion, when a person is charged with an offence under s. 8A(1), the prosecution had to prove that the accused maliciously published the false news. To rebut the presumption the accused need only to show that he has taken reasonable measures to verify the truth of the news. The ordinary man on the street test does not apply in a prosecution under s. 8A(1). It is not one of the ingredients of the offence under the section. Accordingly we hold that the Court of Appeal had erred in applying the test. The Court of Appeal, however, agreed with the trial judge that the words "mangsa dipenjarakan" were false.

Having found that the words published by the appellant were false, the trial judge went on to consider whether the appellant took reasonable measures to verify the truth of the words published. He concluded that there was no evidence that the appellant took reasonable measures to verify the words published. Indeed the trial judge found that the appellant knew that the girl was in custody at Bukit Aman. The trial judge went on to state:

> Tertuduh tahu gadis itu tidak dikurung dalam penjara kerana gadis itu ialah mangsa sex. Tertuduh tahu gadis itu ditahan polis di Bukit Aman. Tertuduh telah berucap di Parlimen dengan teliti menyatakan 'gadis itu ditahan polis pada 30.88.94', 'gadis itu dalam kurungan polis' (disiarkan dalam Penyata Rasmi Parlimen – Eksibit P20) dan tidak sekalipun Tertuduh berucap "gadis itu dipenjarakan". Perdana Menteri dan Dato' Syed Hamid Albar menjelaskan gadis itu diberi perlindungan semasa dalam siasatan. Maka siaran berita "mangsa dipenjarakan" dalam risalah P11B ciptaan Tertuduh adalah disiarkan dengan niat jahat untuk menarik perhatian dan mengelirukan orang ramai.

The Court of Appeal also said that no evidence was led by the appellant to show that he took reasonable measures to verify the truth of the words complained of. It concluded that the appellant was actuated by actual malice in publishing the words "Mangsa Dipenjarakan".

Mr. Karpal Singh submitted that the trial judge ought not to have considered the Record of Parliamentary Debates of the House of Representatives. He said that the evidence taken from the Record of the Parliamentary Debates was inadmissible. A copy of the relevant part of the parliamentary Record was tendered by the prosecution as exh. P20. Mr. Karpal Singh conceded that no objection was taken by the appellant's counsel at the trial or in the Court of Appeal but he argued however that if the evidence was inadmissible it remained inadmissible. In support of his argument, he cited *Karpal Singh v. Sultan of Selangor* [1988] 1 MLJ 64 where Abdul Hamid CJ (Malaya), as he then was, said at p. 65:

> The fact that the Sultan has not contradicted the press reports do not, in my view, make the slightest difference for it is well established that inadmissible evidence does not become admissible by reason of a failure to object.

We are in entire agreement with the above statement of the learned Chief Justice of Malaya. The question to be considered here is whether the Parliamentary Record (exh. P20) was wrongly admitted at the trial and therefore inadmissible.

In support of his argument that the Parliamentary Record (P20) was inadmissible, Mr. Karpal Singh cited an English case *Church of Scientology of California v. Johnson-Smith* [1972] 1 All ER 378; and a Singapore case, *Times Publishing Bhd & Ors. v. S. Sivadas* [1988] 3 MLJ 1.

In *Johnson-Smith* case, the plaintiffs brought an action for libel against the defendant, a Member of Parliament, for defamatory remarks made by the defendant during a television interview. The defendant pleaded fair comment and privilege. In their reply the plaintiffs alleged malice and in order to establish malice, the plaintiffs sought to adduce evidence, including extracts from the *Hansard*, of what the defendant had done and said in

Parliament. Browne J, decided that what was said or done in Parliament in the course of proceedings there could not be examined outside Parliament for the purpose of supporting a cause of action even though the cause of action itself arose out of something done outside Parliament; and consequently the evidence sought to be given must be excluded.

In that case Browne J, referred to art. 9 of the Bill of Rights (1688) which provides: "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parlyament". He then referred to *Bradlaugh v. Gossett* [1884] 12 QBD 271 and quoted a passage from the judgment of Stephen J. The passage states the principles laid down by Blackstone namely: "The whole of the law and custom of Parliament has its origin from this one maxim 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed and adjudged in that House ... and not elsewhere"'. The principle was restated in *Stockdale v. Hansard* [1839] 9 Ad. El. 1.

In *Times v. Sivadas* the facts are clearly stated in the head note and I quote below:

> The defendant submitted written representations to the Clerk of Parliament in response to a notice made by the Clerk inviting representations on the Companies (Amendment) Bill from the public, for the consideration of the Select Committee. The defendant was not invited to give oral evidence before the Select Committee. The plaintiffs took the view that they had been gravely defamed by certain of the statements which formed part of the defendant's representations and issued a writ against him claiming damages for defamation and an injunction to restrain the defendant from further publishing the statements. The defendant raised the defence of absolute privilege and subsequently applied for the following preliminary issue to be determined by the court, i.e. whether the defence of absolute privilege is as a matter of law available to the defendant.

Grimberg JC, considered the English principles as laid down in art. 9 of the Bill of Rights and in the other English cases. The learned Judicial Commissioner also considered the relevant Singapore legislation. In his judgment at p. 8, he said:

> I find that the immunities of Parliament in Singapore are those which ... exist in the United Kingdom, and that these immunities include exemption from civil and criminal liability arising out of the contents of written representations made by a member of the public to Parliament concerning a bill before a Select Committee ...

He then concluded:

> ... in my judgment, in the overriding public interest that written representations to Parliament should attract absolute privilege, so that persons making them in the discharge of their rights should feel free to do so without being threatened with, or vexed by proceedings whether they be civil or criminal.

It is to be noted that *Johnson-Smith* states the principles of Parliamentary privilege in England. *Times v. Sivadas* applied the English principles. It is also to be noted that the circumstances in those two cases are different from the facts of the present case.

The position in Malaysia is slightly different. Article 63 of the Federal Constitution states as follows:

> (1) The validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court.
>
> (2) No person shall be liable to any proceedings in any court in respect of anything said or any vote given by him when taking part in any proceedings of either House of Parliament or any committee thereof.
>
> (3) No person shall be liable to any proceedings in any court in respect of anything published by or under the authority of either House of Parliament.
>
> (4) Clause (2) shall not apply to any person charged with an offence under the law passed by Parliament under Clause (4) of Article 10 or with an offence under the Sedition Act 1984 as amended by the Emergency (Essential Powers) Ordinance No. 45 1970.
>
> (5) Notwithstanding Clause (4), no person shall be liable to any proceedings in any court in respect of anything said by him of the Yang di-Pertuan Agong or a Ruler when taking part in any proceedings of either House of Parliament or any committee thereof except where he advocates the abolition of the constitutional position of the Yang di-Pertuan Agong as the Supreme Head of the Federation or the constitutional position of the Ruler of a State, as the case may be.

Clause (4) was added with effect from 10 March 1971 by the Constitutional (Amendment) Act 1971. Clause (4) limits the right of free speech in Parliament to the extent as stated therein. See *Mark Koding v. Public Prosecutor* [1982] 2 MLJ 120.

Under cl. (1) the court cannot question the validity of proceedings in either House of Parliament or any committee thereof. The Federal Court has decided that it could, however, look at the records of proceedings in Parliament in order to determine whether the Emergency (Public Order and Prevention of Crimes) Ordinance 1969 was laid before both Houses of

Parliament. If the records kept by parliament showed that a paper had been laid, that is conclusive as far as the courts are concerned. See *Inspector-General of Police & Anor v. Lee Kim Hong* [1979] 2 MLJ 204, the issue before the Federal Court was whether a state of Emergency proclaimed by the Yang di-Pertuan Agong under art. 150(1) two days after 13 May riots, was laid before the Senate. Suffian LP, in delivering the judgment of the court said:

> ... Secondly, reference was made during the course of arguments to Article 63(1) of the Constitution ... and the learned Solicitor-General, relying on *M.S.M Sharma v. Shree Krishna Sinha*, half-heartedly argued we had no jurisdiction to question the validity of the Proclamation. In our judgment, that article means this, that if in fact the Votes and Proceedings of the Senate recorded that the Proclamation had been laid before the Senate then, as it was also so recorded in the Register as well as mentioned in the Order Paper for the day, we would have been debarred from questioning its validity, but that we are not precluded from examining the matter where the Votes and Proceedings are silent.

Since the question of the admissibility of the exh. P20 was not raised at the trial and in the Court of Appeal the matter was not dealt with by the courts below. Mr. Karpal Singh only raised the issue before this court.

In our view, this court is not precluded from looking at exh. P20 for the purpose of ascertaining whether the appellant had taken measures in Parliament to verify the truth of the words "Mangsa Dipenjarakan".

It is now necessary to examine exh. P20.

On 24 October 1994, the appellant moved a motion in the Dewan Rakyat. The motion reads. "Tindakan Tidak Adil Peguam Negara dalam Kes Hubungan Sulit Tan Sri Abdul Rahim Thamby Chik Dengan Pelajar Bawah Umur." The main thrust of the motion was to attack the Honourable the Attorney-General. With regard to the under-aged girl, he said that she was not released from "kurungan polis". In his written reply, the Honourable the Prime Minister said that the girl was kept in protective custody for her own safety. We have read the Penyata Rasmi Parlimen (Parliamentary Debates) Dewan Rakyat dated 24 October 1994, pp. 1-157 and we are of the view that he moved the motion to debate the matter in Parliament and not to verify the truth whether the under-aged girl was in prison. In his speech, the appellant did not use the word "dipenjarakan". The written reply of the Prime Minister and the speeches of Datuk Syed Hamid were clear that the girl was not in prison.

Exhibit P20 therefore does not show any evidence that the appellant took measures to verify the truth that the under-aged girl was "mangsa dipenjarakan".

We agree with the Court of Appeal and the trial judge that there was no evidence that the appellant took reasonable measures to verify the truth of the words complained of. There was no evidence to rebut the presumption under s. 8A(2) of the Act. In the circumstances, we agree with the Court of Appeal that the trial judge was right in finding the appellant guilty of the first charge. Before dealing with the question of sentence, we propose to deal with the second charge next.

As already stated, the appellant was also charged under s. 4(1) of the Sedition Act 1948. The section states that "Any person who – (b) utters any seditious words ... Shall be guilty of an offence." The word "seditious" is defined in s. 2. It means "when applied to or used in respect of any act, speech, words, publication ... as one having a seditious tendency." Section 3 states, *inter alia*, that a "seditious tendency" is a tendency ... (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State.

Before going into the appellant's grounds of appeal, it is relevant to state briefly the case for the prosecution. On 19 January 1995, a few police officers were present at the ceramah given by the appellant. Kpl. Stanley Liew (SP2) was present at the ceramah. He listened to the appellant's speech and at the same time he took down notes. Later on he typed what was written in his notes. The copy was tendered as exh. P6. Two other police officers, Zakaria Budin (SP7) and Inspector Loke Yoke Choy (SP13) were also present at the ceramah.

The essence of the appellant's speech as stated by Stanley Liew and in P6 is that:

(1) The appellant was dissatisfied with the laws of Malaysia because of the double standard, namely, the rape case involving Tan Sri Rahim Thamby Chik was not brought to the court and the Attorney-General had stated that Tan Sri Rahim was not involved in a rape case involving an under-aged girl;

(2) The appellant was dissatisfied with the decision of the court ordering the girl involved in the rape case to be detained for a period of three years when in fact Tan Sri Rahim should be sent to prison. He said an innocent person (the under-aged girl) was sent to prison instead.

Mr. Karpal Singh submitted that the trial judge considered the evidence of the prosecution witnesses unsatisfactory in relation to the first part of the second charge. He said that if the prosecution evidence was unsatisfactory, the trial judge should not have asked the appellant to enter his defence on the second charge. Mr. Karpal Singh was wrong in using

the word "unsatisfactory". The trial judge did not use that word. What the trial judge said was that he considered the possibility that the prosecution witnesses were confused (terkeliru). He also considered the possibility that the appellant himself tried to confuse the court. The trial judge then made a finding of fact that the appellant's speech was not seditious in respect of the first part of the second charge.

He made this finding, after considering the defence case. At the end of the case from the prosecution, the trial judge had called upon the appellant to enter his defence on the first and second parts of the second charge. Despite his finding on the first part of the second charge, the trial judge was entitled to consider the second part. See the judgment of Raja Azlan Shah FJ in *Public Prosecutor v. Datuk Haji Harun bin Haji Idris* [1977] 1 MLJ 15 @ 19. The Public Prosecutor did not appeal against the decision of the trial judge in respect of the first part of the second charge. His decision, therefore, still stands and is not an issue in this appeal.

Mr. Karpal Singh's next ground was also on the issue of fact. He argued that the evidence of the prosecution witnesses contradicted one another. He referred to the evidence of Mr. Yew Kok Kee (SP14) who was a member of the DAP. This witness denied that the appellant uttered the words contained in the second charge. He then referred to the evidence of the police officers, Kpl. Stanley Liew, Zakaria bin Budin and Inspector Loke Yoke Choy. According to him there were two sets of evidence before the trial judge. He said that in his grounds of judgment, the trial judge had rejected the evidence of Yew Kok Kee on the ground that his evidence was biased and weak (lemah). The trial judge, however, accepted the evidence of Kpl. Stanley Liew and Zakaria bin Budin. We think this point has been adequately dealt with by the Court of Appeal. After considering the evidence and the law, the Court of Appeal concluded:

> We are unable to discern any error in the trial judge's approach to the evidence led in proof of the second charge. In our judgment there was judicial appreciation by the trial judge of the evidence led in support of the second charge. The submission on the contradiction point therefore fails.

We confirm that the above passage is the right conclusion in the circumstances of this case. See *Datuk Haji Harun bin Haji Idris* case *(Ibid), Pie B. En. Chin @ Mohamed bin Chin v. Public Prosecutor* [1983] 1 CLJ 316; *Mohamed Alias v. Public Prosecutor* [1983] 2 MLJ 172; *Seena Pakkeer Mohamed and Others v. Pana Kader Merah* [1896] SSLR 84; and *Lim Yow Choon v. Public Prosecutor* [1972] 1 MLJ 205.

We now turn to the next ground. Mr. Karpal Singh submitted that the court could not convict an accused person on the uncorroborated evidence of one witness. In support of his submission he relied on the judgment of Gunn Chit Tuan J (as he then was) in *TN. Nathan v. Public Prosecutor* [1978] 1 MLJ 134 @ 137. We do not think that case is relevant to the present case. In that case the learned judge decided that the issue before his lordship was the question of the uncorroborated evidence of an accomplice. The witness referred to by Mr. Karpal Singh in the present case was Kpl. Stanley Liew. It is not in dispute that Kpl. Stanley Liew was not an accomplice but an ordinary witness.

Mr. Karpal Singh drew the attention of this court to s. 6(1) of the Sedition Act. The section states that notwithstanding anything to the contrary contained in the Evidence Act, no person shall be convicted of an offence under s. 4 on the uncorroborated testimony of one witness. He submitted that under the section there could not be any conviction on the uncorroborated evidence of one witness. He said in the present case the police did not tape record the speech of the appellant. According to him the trial judge was wrong in convicting the appellant on the second charge on the basis of the uncorroborated evidence of Kpl. Stanley Liew.

The Deputy Public Prosecutor, Encik Azhar bin Mohamad agreed with Karpal Singh that s. 6(1) of the Act requires corroboration of the testimony of one witness. He submitted however that the evidence of Zakaria bin Budin and Inspector Kok Yok Choy corroborated the evidence of Kpl. Stanley Liew. He said that P6 was an important evidence. He then referred to s. 157 of the Evidence Act, and said that that section allows a person to corroborate himself by his former statement. He accordingly submitted that P6 corroborated the evidence of Kpl. Stanley Liew.

It is clear that under s. 6(1), the court cannot convict a person on the uncorroborated evidence of one witness. See *Mark Koding v. Public Prosecutor* [1983] 1 MLJ 113 @ 114.

In considering the question of corroboration under the Sedition Act, we shall first examine s. 157 of the Evidence Act. The section states:

> 157. In order to corroborate the testimony of a witness, any former statement made by him whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Mr. Karpal Singh submitted that the learned deputy was wrong in saying that s. 157 could be invoked for the purpose of corroboration in the present case. He referred to an article, *"Corroboration by former Statements"* by S. Augustine Paul published in the Malayan Law Journal [1990] 2 MLJ

xci. That article discussed the position of s. 157 of the Evidence Act in the light of s. 73A which was added to the Act by virtue of PU(A) 261 of 1971. At p. xcv, the author states:

> Once it has been established that the first limb of s. 73A(7) applies to the evidence of a particular witness of a specified class then the second limb of the said section will be automatically activated. This would mean that such a statement, though rendered admissible by the Evidence Act 1950, shall not be treated as corroboration of evidence given by the maker of the statement. This mandatory direction would apply, in particular, to statements admitted under s. 157. The inevitable result is that s. 73A(7) will now operate to exclude out-of-court statements admitted under s. 157 form being of any corroborative value to the testimony of the maker. Section 157, the plague of the courts for decades, has been rendered nugatory.
>
> Section 157 must now operate subject to s. 73A(7).

The author concludes his article by stating, "It is ... submitted that ... s. 73A(7) has the statutory power to wipe out and nullify the effect of s. 157 thus rendering the said section otiose."

Mr. Karpal Singh also cited *Aziz bin Muhammad Din v. Public Prosecutor* [1996] MLJ 475. That case was decided by Mr. Augustine Paul who had since been elevated to the High Court as Judicial Commissioner. In that case the learned Judicial Commissioner decided that s. 73A(7) of the Evidence Act had a direct bearing on the evidence rendered admissible by s. 157. He held that both the sections could not be harmoniously interpreted and in the light of the rules of construction, s. 73A(7) must prevail. Thus, he said, a statement rendered admissible by s. 157 could not be treated as corroboration of evidence given by the maker of the statement.

It is now necessary to see s. 73A of the Evidence Act. The section states:

> 73A. (1) Notwithstanding anything contained in this Chapter, in any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied:
>
> (a) if the maker of the statement either:
>
> (i) had personal knowledge of the matters dealt with by the statement;
>
> or
>
> (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (so far as the matters dealt with thereby are not within his personal knowledge)

in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have had, personal knowledge of those matters;

and

(b) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence -

(a) notwithstanding that the maker of the statement is available but is not called as a witness; and

(b) notwithstanding that the original document is not produced, if, *in lieu* thereof, there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated, involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document, or the material part thereof, was written, made or produced by him with his own hand, or was signed or initialed by him, or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of subsections (1) to (4), the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, for from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and, where the proceedings are with assessors, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason, it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(7) For the purpose of any rule of law or practice requiring evidence to be corroborated, or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

It is to be noted that sub-s. (1) expressly states the admissibility of a statement made by a person in any civil proceedings. Sub-section (2) also expressly states the admissibility of a statement in any civil proceedings. Sub-section (3) states what type of statement is inadmissible. Sub-section (4) describes how a statement is deemed to have been made by a person for the purpose of s. 73A. Sub-section (5) states that in order to decide whether or not a statement is admissible as evidence by virtue of sub-s. (1) to (4) the court may draw a reasonable inference. Sub-section (6) refers to the weight to be attached to a statement rendered admissible. Sub-section (7) states that a statement rendered admissibly as evidence under the Act shall not be treated as corroboration of evidence given by the maker of the statement.

In our opinion s. 73A should be read as a whole. The subsections should not be read in isolation of one another. After reading the section, we are satisfied that the whole section refers to the question of admissibility of a statement made by a person in civil proceedings.

In *Aziz bin Mohamed Din v. Public Prosecutor*, the appellant was convicted by the Sessions Judge under s. 376 of the Penal Code. He appealed to the High Court and one of the issues raised was whether a statement emanating from a witness could be used as corroboration. Augustine Paul JC, who heard the appeal, considered s. 73A(7) and s. 157 of the Evidence Act. In his judgment, he said that s. 73A(7) is in conflict with s. 157. He then referred to the marginal note of s. 73A as a guide to the interpretation of the section. The marginal note reads, "Admissibility of documentary evidence in civil cases, etc." The learned Judicial Commissioner concluded that the abbreviation 'etc.' in the note makes it abundantly clear that the admissibility of documentary evidence in civil cases is only one of the matters that the section covers. Thus, he said, "the section is not restricted in its application just to the admissibility of documentary evidence in civil cases." He ruled that the documentary evidence made by a witness could not be treated as corroboration of the evidence of a witness. This was one of the grounds he relied upon when he allowed the appeal in that case.

We think there is a fallacy in the reasoning of the learned Judicial Commissioner. The abbreviation "etc." is from the Latin word *"et cetera"* and it means, "And other things or matters of like character, of the same class: of like kind or purpose." See R.S. Vasa (Ed), *Latin Words and Phrases for Lawyers,* 1980 p. 80. *The Concise Oxford Dictionary,* 9th edn, also defines the word *"et cetera"* to mean "and the rest; and similar things." From the definitions, it is clear that the abbreviation "etc." in the marginal note means other things or matters relating to documentary evidence in civil cases only. The abbreviation does not include documentary evidence in criminal cases. Thus, sub-ss. (6) & (7) relate only to documentary evidence in civil cases.

Augustine Paul JC went on to state in his judgment that "a statement rendered admissible by s. 157 cannot be treated as corroboration of evidence given by the maker of the statement." This proposition has the effect of amending or modifying s. 157. Like other provisions of the Evidence Act, s. 157 was passed by Parliament and Parliament alone can modify, amend or repeal the section. So far Parliament has not done anything to the section. Therefore it remains in force in its present form. The court may interpret and apply the section but it cannot change what is stated in the section.

It is our view that under s. 157, a former statement made by a witness is admissible in order to corroborate his testimony. The weight of such a statement for the purpose of corroboration depends on the facts of a particular case. This view is supported by a long line of decided cases. In *Liew Wah Ming v. Public Prosecutor* [1963] 29 MLJ 82. Thomson CJ, said:

> Section 157 is clear and unambiguous and there can be no doubt that in the circumstances laid down in that section a former statement made by a witness is admissible to corroborate his testimony and with the object of showing consistency. But the weight or value of such a statement as corroboration must always be a question of fact ... While, therefore, the former statement of an accomplice or ... of a child is admissible to corroborate his testimony and to indicate consistency the weight to be attached to it must vary with the facts of each case.

See also *R v. Velayuthan* [1935] 4 MLJ 277; *R v. Koh Soon Poh* [1935] 4 MLJ 120; *Mohamed Ali v. Public Prosecutor* [1962] 28 MLJ 201; *Karthiyayani & Anor v. Lee Leong Sin & Anor* [1975] 1 MLJ 119; *Public Prosecutor v. Samsul Kamar bin Mohd Zain* [1988] 1 CLJ 542; [1988] 2 MLJ 252.

We wish to add here that despite s. 73A(7), s. 157 applies to civil cases as well. In *Karthiyayani & Anor v. Lee Leong Sin & Anor* 1 MLJ 119, Raja Azlan Shah FJ, as he then was, said:

> It is settled law that a person cannot corroborate himself but it would appear that section 157 of the Evidence Act enables a person to corroborate his testimony by his previous statement. The section adopts a contrary rule of English jurisprudence by enacting that a former statement of a witness is admissible to corroborate him, if the former statement is consistent with the evidence given by him in court. The rule is based on the assumption that consistency of utterance is a ground for belief in the witness' truthfulness, just as inconsistency is a ground for disbelieving him. As for myself, although the previous statement made under section 157 is admissible as corroboration, it constitutes a very weak type of corroborative evidence as it tends to defeat the object of the rule that a person cannot corroborate himself. In my opinion the nature and extent of corroboration necessary in such a case must depend on and vary according to the particular circumstances of each case. What is required is some additional evidence rendering it probable that the story of the witness is true and that it is reasonably safe to act upon it. If a witness is independent, ie, if the has no interest in the success or failure of a case and his evidence inspires confidence of the court, such evidence can be acted upon. A witness is normally to be considered independent unless he springs from sources which are likely to be tainted. If there are circumstances tending to affect his impartiality, such circumstances will have to come to a decision having regard to such circumstances. The court must examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it.

The question to be considered here is whether s. 157 applies to the present case. In our opinion it does because the provision contained in s. 157 is not contrary to s. 6(1) of the Sedition Act. We, therefore, agree with the submission of the learned deputy that the statement (exh. P6) corroborates Kpl. Stanley Liew's evidence. The weight of the statement for the purpose of corroborating Kpl. Stanley Liew's evidence is a question of fact. The trial judge had considered the value of the statement and made a finding of fact that the statement alone was not sufficient corroboration to convict the appellant. He said, however, that Stanley Liew's evidence was corroborated by the evidence of Zakaria Budin (PW7) and Inspector Lok Yoke Choy (PW13). He added that the credibility of Kpl. Stanley Liew's evidence was enhanced when Insp. Lok confirmed as correct the content of the statement (P6).

The Court of Appeal accepted the finding of the trial judge when it said that although the two other witnesses could not recall every word spoken by the appellant, they confirmed that evidence of Kpl. Stanley Liew in material particulars. The court said "This is sufficient corroboration in the eyes of the law."

We entirely agree with the Court of Appeal. The prosecution had therefore satisfied the requirements of the law as contained in s. 6(1) of the Sedition Act.

Having considered all the issues raised by the appellant before this court, we are satisfied that the appellant was rightly convicted of the two charges against him.

On the question of sentencing, Mr. Karpal Singh submitted that the two offences did not warrant custodial sentences. He cited *Public Prosecutor v. Mark Koding* where the accused was bound over without a conviction. He said that the intention of the appellant in holding the ceramah and uttering the said words was honourable. He also said that the appellant was a first offender and asked this court not to impose sentences which would disqualify him from being a Member of Parliament. He submitted that a sentence of 18 months imprisonment in respect of each charge was excessive. He asked this court to reduce the sentence in respect of each charge to one quarter of the 18 months, which is 4 1/2 months.

The learned deputy submitted that the Court of Appeal was right in intervening the sentences passed by the trial judge. He said that public interest demands that the court view the offences seriously and urged this court to consider deterrent sentences.

With regard to the offence under s. 8A(1) of the Printing Press and Publications Act, the Court of Appeal expressed the following view on the question of sentence:

> In our judgment the imposition of a fine on the appellant, having regard to all the circumstances of the case, is a mere tap on the wrist because it plainly lacks any deterrent effect. Taking into account all the circumstances of the case, including the seriousness of the case, including the seriousness of the offence and the requirement of deterrence, and after striking a balance between the interests of the public and the interests of the appellant, we came to the conclusion that a term of eighteen months imprisonment would be the appropriate sentence to be passed upon the appellant. We sentenced the appellant accordingly upon the first charge.

In respect of the offence under s. 4(1) of the Sedition Act, the Court of Appeal said:

> To return to the case before us, we find merit in the criticism by Encik Azahar of the learned Judge's approach to the question of sentence passed upon the appellant in respect of the second charge. It would appear that the learned Judge did not sufficiently appreciate the seriousness of the offence committed by the appellant. The fine of RM5,000, in default 3 months imprisonment imposed by the learned Judge is in our view, for the reasons already given, grossly inadequate. It follows that the appellant's appeal against sentence must fail.

True, that section 4 of the Sedition Act provides for a fine in priority to a term of imprisonment as punishment. But that is not to say that a court ought never to send a person to prison for sedition. It all depends on the facts of each case. Having regard to the facts of each case, we came to the conclusion that the sentence imposed by the Judge must be set aside in favour of a term of imprisonment of 18 months from April 1, 1998.

The Court of Appeal rightly applied the deterrence principle in enhancing the sentence to a term of 18 months imprisonment in respect of the first offence. It is also implicit that the Court of Appeal applied the same principle in respect of the second offence.

In our opinion, the Court of Appeal had applied the correct principle in enhancing the sentence to 18 months imprisonment in respect of each offence in the circumstances of this case. The sentences are not manifestly excessive bearing in mind the nature of the two charges and the facts of this case. We have considered Mr. Karpal Singh's submission and the submission of the learned deputy and we are of the view that this court should not interfere with the sentences passed by the Court of Appeal.

For the reasons given above we agreed that all the appeals be dismissed.